

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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May 25, 1999
AO-99-09

Amos J. Eaton
400 West Cummings Park, Suite 1725-281
Woburn, MA 01801

Re: Formation of PAC or issues advocacy group

Dear Mr. Eaton:

This letter is in response to your March 20, 1999 letter requesting an advisory opinion regarding the formation of a PAC or an issues advocacy group.

You have stated that a group of political activists in communities north of Boston is seeking to form a political action committee (PAC) or issues advocacy group "to educate the electorate on issues and consequences of their vote in an election." In particular, the group wishes to educate voters and advocate issues, which "tend to be associated with the Republican Party, such as lower taxation and smaller government." The group will hold seminars for persons interested in running for office, e.g., "how to talk to voters," "building and using databases," "how to write a marketing letter," and "building political committees." The primary goal of the group will be to educate voters and persons interested in participating in the political process, but you also may seek to influence legislative bodies. Although the group plans to make endorsements to support candidates, funds will not be raised specifically for that purpose. The endorsements would be distributed beyond the scope of the group's membership.

You have asked several questions, each of which is answered below.

Question 1: Does the making of candidate endorsements require the group to register as a PAC?

Answer: No. Based on your description, the group would be an "issues advocacy" group. The campaign finance law does not require an issues advocacy group that endorses candidates to register as a PAC.

A "political committee" is any association or other group "which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . . or for the purpose of opposing or promoting" a ballot question. See M.G.L. c. 55, § 1. A group that does not raise funds to influence the nomination or election of a candidate or candidates, but may make occasional expenditures for that purpose, does not need to organize as a political



committee. Such groups, if primarily organized to mobilize public opinion or lobby municipal officials regarding a particular issue, are often called "issues advocacy groups." An issues advocacy group, unlike a political committee, does not have to report its receipts, although it must report expenditures made to support or oppose candidates if the expenditures are "more than incidental" in comparison with other expenditures of the group. See interpretive bulletin IB-88-01 (a copy of which is enclosed, for information). In addition, an issues advocacy group should disclose contributions made to a candidate to the candidate's campaign and independent expenditures as discussed below.

Question 2: Must payments, which are made by the group without consultation with candidates, to mail or advertise endorsements be reported as independent expenditures made to support the candidates endorsed by the group?

Answer: Yes, if the aggregate amount spent for the endorsements distributed beyond the membership of the group, together with other independent expenditures to support or oppose candidates, exceeds \$100 during a calendar year.

Expenditures made to influence the nomination or election of a candidate or candidates which exceed the aggregate amount of \$100 in a calendar year that are made "without cooperation or consultation" with any candidate or committee, are *independent expenditures*. See M.G.L. c. 55, § 18A.¹ Such expenditures, for example to place an advertisement in a newspaper or for mailings to voters, must be reported on Form CPF 18A, "Report of Independent Expenditure Promoting Election or Defeat of Candidate(s)."

Issues advocacy groups² are frequently "membership organizations." Communications from a "membership organization" (other than a corporation subject to section 8) *to its members and their families, on any subject*, are not "contributions" or "expenditures" subject to the campaign finance law. See M.G.L. c. 55, § 1 and AO-98-22. The newsletter that you have described, however, would be distributed beyond the scope of your group's membership. Even if your group is a membership organization, however, the additional production and distribution cost associated with the distribution of the endorsements beyond the scope of the organization's membership would be an independent expenditure. If the total cost of producing and distributing the endorsements to non-members exceeds \$100, your group must file a Form CPF 18A.

Question 3: If the organization uses the word "Republican" in describing its purpose in its bylaws, must it register as a PAC?

¹ "Independent expenditures" are expenditures by an individual or group "expressly advocating the election or defeat of a clearly identified candidate which [are] made without cooperation or consultation" with a candidate or committee. See M.G.L. c. 55, § 18A. If the endorsements are made with the cooperation or consultation of a candidate or committee, the costs are *in-kind contributions* to the candidate and the candidate would be required to report the contributions regardless of amount. See M.G.L. c. 55, §§ 1 and 18. Such contributions would also be limited if the organization has made more than "incidental" expenditures to support or oppose candidates, PACs or political parties. See IB-88-01.

² We understand that you are forming an issues advocacy group, not a media organization. Media organizations make expenditures to publish editorials in support of or opposition to candidates that are not subject to the provisions of section 18A, although media organizations are subject to other provisions of the campaign finance law. See M.G.L. c. 55, § 8A.

Answer: No. Using the name of a party in an organization's bylaws does not necessarily mean that the organization is a political committee.

As noted in our response to your first question, a political committee is defined as any group "which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . . or for the purpose of opposing or promoting" a ballot question. Merely including the word "Republican" in the bylaws of a group, or in the group's name, does not mean that the group comes within that definition. See AO-94-43 (Republican Club of Massachusetts, which publishes a calendar of events of interest to Republican Party activists and supporters and sponsors unity luncheons following the Party convention to offset operating costs and provide forum for bringing activists and supporters together, is not a political committee).

If you wish to use the name "Republican" in the name of the group, you first must obtain the consent of the Massachusetts State Republican Party. See M.G.L. c. 56, § 40, which states that no organization other than the state party committees may use the name of a political party "in any circular, advertisement or publication . . . except with the written consent of the duly elected state committee representing such political party."

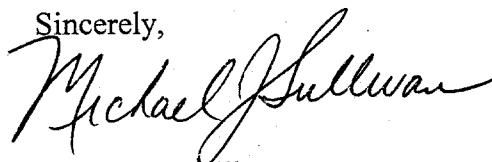
Question 4: If the group becomes a PAC and describes its purpose as "supporting Republican principles" or "supporting Republican candidates," and a majority of contributors are Republicans, must the PAC include the word "Republican" in its name?

Answer: Yes, assuming you obtain the consent of the Massachusetts State Republican Party to use the name.

The campaign finance law specifies that a PAC must identify itself using a name or phrase which "clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors." If the economic or other special interest of a majority of contributors is not identifiable, the statute requires a name "that clearly identifies the economic or other special interest, if identifiable, of a majority of its organizers." See M.G.L. c. 55, § 5B. If you form a PAC with the purpose described above, however, you must use the name "Republican" in the name of the PAC, assuming you obtain the consent of the Massachusetts State Republican Party.

This opinion is issued on the basis of your letter and conversation with OCPF staff, and is solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,



Michael J. Sullivan
Director